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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In re DONALY T., et al., Persons Coming
Under the Juvenile Court Law.

B176562

(Los Angeles County
Super. Ct. No. CK55549)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

KIMBERLY T.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Thomas E. Grodin, Commissioner. Affirmed.

Barbara S. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and Judith A. Luby, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Kimberly T., the mother of Donaly T., Destiny M., and Abraham M., appeals from the jurisdictional and disposition orders of the court declaring the children dependents under Welfare and Institutions Code section 300, subdivision (b),¹ and removing them from her custody and placing them in foster care under section 361, subdivision (c).² She contends the evidence was insufficient to support the dependency jurisdiction and to support the decision to remove the children from her custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The children came to the attention of respondent Los Angeles County Department of Children and Family Services (DCFS) after an emergency referral on May 4, 2004, for emotional abuse, domestic violence, and general neglect. Mother admitted at a clinic that her boyfriend had beaten her in front of the children, but refused to stay at a domestic violence shelter. She appeared incoherent and illogical and was believed to be under the influence of drugs.

A Good Samaritan found Mother and the children roaming the streets, looking dirty, disheveled, and hungry on May 17, 2004. Mother appeared incoherent and under the influence of drugs. She was so confused that she could not provide even the most basic information about the children such as their names and birthdates. The thin and malnourished looking children were grimy, wore dirty clothes, and complained of hunger. Ten-month old Abraham was wearing a diaper that had not been changed for days.

Mother told the social worker that she and the children had been homeless for six weeks, and needed help finding shelter. She appeared dirty and incoherent; she talked to

¹ All further statutory references are to the Welfare and Institutions Code.

² Henry S., the alleged father of Donaly, and Armando M., the alleged father of Destiny and Abraham, are not parties to this proceeding.

herself and had trouble concentrating on the social worker's questions. She denied abusing drugs or alcohol. The police could not confirm whether Mother was under the influence of drugs.

A family friend stated that Mother and the children had been living on the street for two months; the friend had cared for the children for a few days, but asked Mother to leave because she was "intolerable."

Mother admitted that Armando M., the father of two of the children, hit her about a year ago. The social worker contacted numerous domestic violence shelters for Mother and the children. She took Mother to a shelter, but Mother was denied admission because she would not acknowledge she was a victim of domestic violence. Mother was rejected by other shelters because she appeared intoxicated.

Mother signed a voluntary services agreement and a medical authorization form so the children could be placed temporarily in foster care until space in a homeless shelter could be found, but she subsequently refused to cooperate with the agreement.

DCFS filed a petition under section 300, subdivisions (a) (domestic violence), (b) (mental and emotional problems, failure to protect and general neglect), (c) (serious emotional damage), and (g) (no provision for support). The court detained the children and ordered DCFS to provide reunification services and facilitate monitored visits.

According to a jurisdictional/disposition report dated June 29, 2004, Mother admitted that Armando had hit her once, but denied that the children were present. She also stated that Armando was emotionally abusive and aggressive. Donaly stated that she saw Armando kick Mother in the stomach when she was pregnant with Abraham, and she saw Armando hit Mother on the head with a ring on another occasion. Mother stated that she did not want to have anything to do with Armando anymore, but admitted that she had recently spoken with him.

Mother appeared unfocused, lost in thought, and distracted. She heard voices and talked to herself. She denied having a history of mental problems. DCFS provided Mother with numerous referrals for counseling, parenting classes, and drug testing, but Mother failed to follow through on any of the referrals and failed to try to look for a

shelter. The social worker expressed concern that Mother had serious mental problems and had not received help for domestic violence.

Mother visited the children five times. The first visit was terminated after she cursed at Donaly. The other visits went a little better, but Mother had to hold herself back to keep from engaging in inappropriate behavior.

At the jurisdiction/disposition hearing on June 29, 2004, Mother stated that Armando last saw the children approximately two months before the hearing. He had not lived with Mother and the children for approximately one year. She submitted the matter to the court under *In re Malinda S.* (1990) 51 Cal.3d 368. Mother waived her right to cross-examine the social worker regarding the jurisdictional findings.

Mother wanted to have the children returned to her or to paternal relatives. Mother testified that she currently was living with Armando's parents, and if she had custody of the children they all could live with Armando's parents. She promised to attend counseling and parenting classes, and stressed that she had visited the children weekly. Past referrals were not fruitful because she had no money to pay for help. She appeared confused when asked about Donaly's prospective attendance at school.

Donaly's attorney asserted that although Donaly wished to be returned to Mother, it would not be in the child's best interests. Counsel was not in favor of Mother living in the paternal grandparents' home if the children were placed there.

DCFS did not submit any medical or psychiatric records into evidence.

The court declared the children to be dependents of the court pursuant to section 300, subdivision (b). It sustained allegations that the children were exposed to violent confrontations between Mother and Armando on numerous occasions during which Armando hit Mother. This endangered the children's physical and emotional health, safety, and well-being, resulted in a detrimental home environment, and placed the children at risk of harm. The court sustained allegations that Mother had mental and emotional problems as exhibited by her paranoid, bizarre, and erratic behavior. This also endangered the children and placed them at risk of harm.

Turning to disposition, the court found by clear and convincing evidence and based upon the facts in the report and sustained petition that a substantial danger existed to the physical and emotional well-being of the children. There were no reasonable means to protect the children besides removal. DCFS made reasonable efforts to eliminate the need to remove the children. The children were consequently removed from Mother's custody. The court set the matter for a six-month review hearing. It ordered DCFS to look into any appropriate relative placement and to provide Mother with assistance in obtaining suitable housing. Mother was ordered to attend parenting classes and participate in individual counseling to address domestic violence and mental health issues. No psychiatric evaluation of Mother was ordered.

This appeal followed.

DISCUSSION

A. The Jurisdiction Order

Mother contends that the evidence is insufficient to support the court's finding of dependency jurisdiction. In particular, she asserts that there was insufficient evidence to find that current acts of domestic violence and mental and/or emotional problems placed the children at a substantial risk of serious physical harm or illness as required by subdivision (b) of section 300. We disagree.

Section 300, subdivision (b) provides that, where a child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness due to: 1) a parent's failure or inability to adequately protect the child; 2) the willful or negligent failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment; or 3) the parent's inability to provide regular care for the child because of the parent's mental illness, the child will be subjected to juvenile court jurisdiction. However, a child will not be subject to section 300, subdivision (b) solely because the family lacks emergency shelter.

Spousal abuse is relevant to the issue of whether a child is properly within the jurisdiction of the juvenile court. (*In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562.) The

Sylvia R. court reasoned that both common sense and expert opinion indicate that spousal abuse is detrimental to children. A child will suffer greatly from just witnessing such violence, even if the child is not physically harmed.

The substantial evidence standard of review applies to jurisdictional findings. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) An appellate court must uphold the lower court's findings if there is any substantial evidence supporting the lower court's determinations. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) All conflicts must be resolved in favor of the respondent, and, if possible, all legitimate interferences indulged in favor of upholding the lower court's decision. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) If more than one inference can reasonably be deduced from the facts, the reviewing court cannot substitute its deductions for those of the juvenile court.

Here, the juvenile court's finding of jurisdiction is supported by substantial evidence. Donaly saw Armando strike Mother on two occasions. Mother vacillated between admitting and refusing to admit that she was a victim of domestic violence. She stated that Armando had beaten her in front of the children and that he was emotionally abusive and aggressive. While Mother contended at the disposition hearing that Armando had not lived with them for over a year and had no contact with the children, she also stated that he had seen the children as recently as two months before the hearing. Mother did not receive any domestic violence counseling prior to the hearing.

The cases cited by Mother are unhelpful. Unlike Donaly, the child in *In re Alysha S.* (1996) 51 Cal.App.4th 393, 398, did not witness any violence. The physical abuse was a single isolated incident in *In re Nicolas B.* (2001) 88 Cal.App.4th 1126, 1137. Here, Donaly stated that Armando hit Mother on two occasions, and Mother admitted that Armando was aggressive and emotionally abusive.

The juvenile court's jurisdictional finding was further supported by substantial evidence of Mother's emotional problems. Mother admits that she was homeless, hungry, illogical, and occasionally unfocused, but stresses there was no medical evidence to support allegations of paranoid behavior, talking to herself, or other bizarre and erratic behavior. Medical evidence is unnecessary here. Mother appeared obviously incoherent

and disoriented on more than one occasion. The children were dirty, disheveled, and hungry when detained, and at one point, Mother could not even state her children's names.

Mother relies on *In re Janet T.* (2001) 93 Cal.App.4th 377, but that case is distinguishable from the present situation. In *Janet T.*, no facts were alleged to support the conclusion that the children were currently at a substantial risk of harm. (*Id.* at p. at 392.) Here, in contrast, at the time of the hearing, Mother had received no counseling for domestic violence or emotional problems. There is no indication that her problems had been resolved.

B. The Disposition Order

Mother contends that there was not sufficient evidence of a substantial danger to the children's health or safety to warrant removing the children from her custody under section 361, subdivision (c). We disagree.

Section 361, subdivision (c)(1) requires a demonstration of clear and convincing evidence of a substantial risk of harm to a child if he is returned home, and of no reasonable means to protect the child absent removal, before a court will order the physical removal of a child from a parent. On appeal, however, the substantial evidence test applies to determine whether the clear and convincing standard of proof was met at the dispositional hearing. (*In re Amos L.*, *supra*, 124 Cal.App.3d at p. 1038.) The juvenile court has the discretion to issue a disposition order in accordance with its determination of how a child's interests would be best served. Its determination is subject to the abuse of discretion test on appeal. (*In re Corey L.* (1991) 227 Cal.App.3d 339, 346; *In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

Here, the record contains ample evidence to support the finding that Mother could not protect the children from domestic violence and suffered from mental problems. She failed to follow through on a social worker's attempt to get her into a domestic violence shelter and failed to avail herself of any services despite being given numerous referrals to different programs.

There is no evidence that Mother modified her behavior in any way from the time the children were detained until the disposition hearing. During one visit with the children she cursed at Donaly. At the disposition hearing, Mother presented no evidence demonstrating that she understood that Armando presented a danger to the children and that she would prevent them from having contact with him. In fact, she admitted that Armando had seen the children just two months before the hearing. Mother also stated that she wanted to live together with the children in the home of Armando's parents. Given the unresolved issues of domestic violence, there was no justification for returning the children to Mother at disposition.

Mother's mental and emotional problems also support the removal order. Contrary to Mother's assertions, she was not merely homeless. The record demonstrates that she was severely disoriented and confused. She could not state the names of her children. They were found wandering the streets dirty, hungry, and disheveled. Mother's behavior was described as intolerable by a family friend. She exhibited bizarre behavior such as talking to herself during an interview. If the children were returned to Mother her mental problems would place them at risk for substantial harm. Thus, we reject Mother's contention that the evidence is insufficient to support the conclusion that the children would face a substantial risk of harm if they were returned to her.

We conclude the disposition order was supported by substantial evidence and the juvenile court did not abuse its discretion in ordering the children removed from Mother's custody.

DISPOSITION

The orders are affirmed.

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GRIMES, J.*

We concur:

EPSTEIN, P.J.

CURRY, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.